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APR - 8 1991

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
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Federal Communications Commission
Office of the Secretary

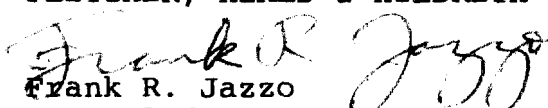
Re: Opposition of King Broadcasting
Company to Joint Petition for Rule Making
RM-7651 ✓ Sub Pet # 96-120

Dear Ms. Searcy:

Transmitted herewith, on behalf of King Broadcasting Company, are an original and four (4) copies of its Opposition to Joint Petition for Rule Making in the above-captioned proceeding.

Should any questions arise concerning this matter, please contact this office.

Very truly yours,
FLETCHER, HEALD & HILDRETH


Frank R. Jazzo
Counsel for
King Broadcasting Company

FRJ/sj

Enclosures

cc: Benjamin F. Dawson, III, P.E. (w/enc.)
Louis R. duTreil, P.E. (w/enc.)
Donald G. Everist, P.E. (w/enc.)

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BEFORE THE

Federal Communications Commission

APR - 8 1991

WASHINGTON, D.C. 20554

Federal Communications Commission
Office of the Secretary

In the Matter of

Amendment of 73.213(a)
Grandfathered Short-Spaced Stations

RM-7651 ✓

To: The Commission

OPPOSITION OF KING BROADCASTING COMPANY TO
JOINT PETITION FOR RULE MAKING

King Broadcasting Company ("King"), licensee of FM broadcast stations KYA, San Francisco, California; KING-FM, Seattle, Washington; and KINK, Portland, Oregon, and other AM and television broadcast stations, by its attorneys, hereby submits its Opposition to the Joint Petition for Rule Making ("Joint Petition") to amend Section 73.213(a) of the FCC's Rules concerning grandfathered short-spaced FM broadcast stations filed on February 1, 1991,^{1/} by the consulting engineering firms of Hatfield and Dawson; du Treil, Lundin & Rackley, Inc.; and Cohen, Dippell and Everist, P.C. ("Joint Petitioners"). In support thereof, the following is submitted:

The Joint Petitioners seek two changes to Section 73.213 with respect to grandfathered short-spaced FM stations. The first change that the Joint Petitioners propose is that grandfathered short-spaced co-channel and first adjacent channel

^{1/} The Joint Petition appeared on FCC Public Notice Report No. 1839, released March 6, 1991. Accordingly, this Opposition is timely filed.

stations be permitted to apply for up to maximum facilities for their class, provided that the pertinent predicted interfering contour of the modifying station does not extend any further in the direction of the short-spaced station's predicted 1 mV/m contour. Presently, such modifications may be made as long as there is no extension of the modifying station's 1 mV/m contour. As noted in the attached Statement of Robert L. Hammett, P.E. of the consulting engineering firm of Hammett & Edison, Inc., while changing the criteria to "no extension of the interfering contour" will allow modifying stations to operate with greater power toward the short-spaced station, such power increases will necessarily result in greater interference than presently exists.

The second change proposed by the Joint Petitioners would permit grandfathered short-spaced second and third adjacent channel stations to relocate without regard to further short-spacing and to increase station facilities to the maximum permitted by Section 73.211 of the FCC's Rules. The Joint Petitioners would essentially have the Commission disregard potential increased interference to existing listeners that would result from such modifications by grandfathered short-spaced second and third adjacent channel FM stations. King opposes this proposed change to Section 73.213 of the FCC's Rules.

King's KYA, San Francisco, California, has a grandfathered short-spacing with third adjacent channel station KJAZ(FM),

Alameda, California. KJAZ had sought to relocate its facilities in such a fashion as to extend its 1 mV/m contour toward the 1 mV/m contour of KYA, in violation of Section 73.213 of the FCC's Rules. The KJAZ application (BPH-890329ID) has been dismissed, however, KJAZ has a petition for reconsideration of that action pending.

The Joint Petitioners cite in the Joint Petition a passage from the December 19, 1989 letter of Larry Eads, Chief, Audio Services Division, which dismissed the KJAZ application, for the proposition that the Commission did not consider in its Second Report and Order in MM Docket No. 86-144 the situation where the 1 mV/m contour of the grandfathered short-spaced second or third adjacent station seeking to relocate is fully encompassed by the 1 mV/m contour of the station it is short-spaced with.^{2/} As stated in the attached Statement of Robert L. Hammett, the Joint Petitioners omit the final sentence of the paragraph cited from Mr. Eads's letter which indicates that it is the Audio Services Division's position that "such cases need to be considered individually." The Joint Petitioners would have the Commission overturn by rulemaking the carefully considered decision of the Audio Services Division with respect to the KJAZ proposed relocation.

The Joint Petitioners cite the Commission's prior, less

^{2/} One of the Joint Petitioners, Hatfield and Dawson, is the consulting engineering firm for KJAZ, Inc., licensee of KJAZ. Hatfield and Dawson prepared the engineering in connection with the proposed KJAZ relocation.

restrictive rule for grandfathered short-spaced second and third adjacent channel stations to support their proposal to permit second and third adjacent channel grandfathered short-spaced stations to relocate and increase facilities without regard to further short-spacing. That rule, however, was adopted nearly twenty-seven years ago, when there was less than one third of the FM stations that exist today. FM interference is a much greater concern now. In fact, in 1987, in adopting its present version of Section 73.213 in the Second Report and Order in MM Docket No. 86-144, the Commission stated:

Grandfathered short-spaced stations have had 22 years to take advantage of Section 73.213 of our rules to optimize their facilities. We believe that continuing to allow these stations to routinely modify their facilities in ways that increase risk of interference is not in the public interest. The FM allocation is becoming increasingly occupied, and continuing to grant routinely modification requests that increase the probability of interference tends to run counter to our objective of promoting efficiency in the use of this spectrum.

63 R.R. 2d at 1271.

The Joint Petitioners have provided no technical support to show that existing service will not be disrupted by the proposed change. Nor have they shown that there are a large number of grandfathered short-spaced second and third adjacent stations that have been precluded from improving their facilities because of the existing rule which would warrant a change in that rule. The KJAZ situation is the only one cited. Moreover, as noted in the attached Statement of Robert L. Hammett, KJAZ has other alternatives available to it.

King continues to believe that the present rule serves the public interest well by protecting existing service to the public. The Joint Petitioners have not demonstrated that their proposed changes to Section 73.213 are warranted. Accordingly, King opposes the adoption of a Notice of Proposed Rule Making for the purpose of amending Section 73.213 of the FCC's Rules.

WHEREFORE, for the foregoing reasons, King Broadcasting Company hereby opposes the Joint Petition for Rule Making in the above-captioned proceeding.

Respectfully submitted,

KING BROADCASTING COMPANY

By: Frank R. Jazzo
Edward W. Hummers, Jr.
Frank R. Jazzo

Its Attorneys

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April 8, 1991

SKJ/FRJ/FRJ3/KING

**TECHNICAL REVIEW OF
JOINT PETITION FOR RULEMAKING
TO AMEND FCC RULES §73.213(a)**

STATEMENT OF ROBERT L. HAMMETT, CONSULTING ENGINEER

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by King Broadcasting Company, licensee of FM Station KYA, San Francisco, California, to review technical aspects of a Joint Petition for Rulemaking ("Petition") filed by the firms of Hatfield and Dawson, du Treil, Lundin & Rackley, Inc., and Cohen, Dippell & Everist, P.C., dated February 1, 1991. The Petition proposes that the Federal Communications Commission Rules in Section 73.213(a) be amended to permit closer spacing of transmitters than is now permitted by the Rules for grandfathered short-spaced stations.

The Petition claims, in effect, that interference does not exist from second- or third-adjacent channel stations regardless of the relative power or spacing between transmitters. No technical proof was offered to support that assertion; the petition merely relies on a statement made by the Commission in 1964. There are now more than three times the number of commercial FM stations that existed in 1964, with worsening interference problems generally existing today.

The non-technical arguments advanced by the Petition are generally the same as those previously advanced in 1989 by KJAZ, Inc., which proposed to move closer to KYA the site of FM Station KJAZ, San Francisco, although it already failed to meet the minimum spacing required by Section 73.207 of the Rules. The KJAZ application, BPH-890329ID, was fully considered by the Federal Communications Commission and was dismissed by a letter dated December 19, 1989, from Mr. Larry D. Eads, Chief, Audio Services Division, Mass Media Bureau. (A Petition for Reconsideration was subsequently filed by KJAZ and that petition is still pending.)

That letter from Mr. Eads detailed the reasons for the Commission's rejection of the KJAZ-proposed aggravation of the existing short-spacing of KJAZ to KYA. At Page 7, the Petition quotes a portion of the 11th paragraph from that letter, where the Commission states that the situation in which an applicant short-spaced station is wholly encompassed within the protected contour of another grandfathered short-spaced station was a situation not considered by the *Second Report and Order* to Docket 86-144. However, the Petition omits the last sentence of the quoted paragraph, namely, "Consequently, such cases need to be considered individually". Therefore, the Petition proposes addressing in the broad-brush form of a rulemaking petition what the Commission has already said should be addressed on a case-by-case basis.

**TECHNICAL REVIEW OF
JOINT PETITION FOR RULEMAKING
TO AMEND FCC RULES §73.213(a)**

The Petition does not state how many existing cases of grandfathered short-spacing on second and third adjacent channels would be affected by its proposed change in the Rules. We are aware of only the KJAZ situation, which was not mentioned by the Petition. We note here only that KJAZ is not prevented from moving its transmitter in accordance with the present rules; a number of alternative less-short-spaced sites are available to KJAZ, including one in the center of San Francisco now used by four FM stations and ten TV stations.

In our opinion, Paragraph 34 of the Commission's Second Report & Order in Mass Media Docket 86-144, released September 25, 1987, remains valid:

34. Discussion. Grandfathered short-spaced stations have had 22 years to take advantage of Section 73.213 of our rules to optimize their facilities. We believe that continuing to allow these stations to routinely modify their facilities in ways that increase the risk of interference is not in the public interest. The FM allocation is becoming increasingly occupied, and continuing to grant routinely modification requests that increase the probability of interference tends to run counter to our objective of promoting efficiency in the use of this spectrum.

The Petition additionally proposes to change, for grandfathered short-spaced co-channel and first-adjacent channel stations, the present criteria of no extension of the 1 mV/m F(50,50) contour. It proposes instead that the pertinent F(50,10) interfering contour not be extended. While it is true that changing the criteria to "no extension of the interfering contour" would allow greater power, such power increases would necessarily result in greater interference than now exists.

We note that the Petition repeats the assertion previously advanced in the KJAZ case that the present FCC Rules are "confusing". We do not share that opinion and believe that the decision reached by the Commission in the KJAZ case sets forth very clearly the facility changes that are allowable for grandfathered short-spaced stations located inside the service contour of adjacent channel stations. We do not believe there is any particular difficulty in administering these Rules. In our opinion, there is no necessity for modification of Section 73.213 of the Rules as proposed by the Petition.

HAMMETT & EDISON, INC.
Consulting Engineers



Robert L. Hammett, P.E.

April 2, 1991

CERTIFICATE OF SERVICE

I, Sandra Johnson, a secretary in the law firm of Fletcher, Heald & Hildreth, do hereby certify that true copies of the foregoing "Opposition to Joint Petition for Rule Making", were sent this 8th day of April, 1991, by postage paid first class United States mail to the following:

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Seattle, Washington 98107

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Sandra K. Johnson